

(4)  
No. 85-224

Supreme Court, U.S.

FILED

NOV 30 1985

JOSEPH F. SPANOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1985

CITY OF RIVERSIDE, ET AL,

*Petitioners,*

v.

SANTOS RIVERA, ET AL.

*Respondents.*

**BRIEF AMICI CURIAE OF  
AMERICANS FOR EFFECTIVE LAW  
ENFORCEMENT, INC.  
JOINED BY  
THE NATIONAL DISTRICT ATTORNEYS  
ASSOCIATION, INC.,  
THE INTERNATIONAL ASSOCIATION OF  
CHIEFS OF POLICE, INC.,  
AND THE  
LEGAL FOUNDATION OF AMERICA,  
IN SUPPORT OF THE PETITIONERS**

Of Counsel:

JACK E. YELVERTON, ESQ.  
Executive Director,  
National District Attorneys  
Association, Inc.  
1033 N. Fairfax Street  
Alexandria, Virginia 22314

FRED E. INBAU, ESQ.  
John Henry Wigmore  
Professor of Law Emeritus,  
Northwestern University  
School of Law  
Chicago, Illinois 60611

DAVID CRUMP, ESQ.  
Professor of Law,  
South Texas College of Law  
Houston, Texas 77002  
Counsel,  
Legal Foundation of America

WAYNE W. SCHMIDT, ESQ.  
Executive Director,  
JAMES P. MANAK, ESQ.  
General Counsel,  
Americans for Effective  
Law Enforcement, Inc.  
5519 N. Cumberland Avenue  
Chicago, Illinois 60656

DANIEL B. HALES, ESQ.  
Peterson, Ross, Schloerb  
and Seidel  
President,  
Americans for Effective  
Law Enforcement, Inc.  
Chicago, Illinois 60656

WILLIAM C. SUMMERS, ESQ.  
Supervising Attorney,  
International Association of  
Chiefs of Police, Inc.  
13 Firstfield Road  
Gaithersburg, Maryland  
20878

*Counsel for Amici Curiae*

# TABLE OF CONTENTS

	PAGE
Table of Authorities.....	ii
Interest of Amici .....	2
Argument .....	4
I.    STANDARDS SHOULD BE ESTABLISHED BY THIS COURT FOR THE GUIDANCE OF DISTRICT COURTS IN AWARDING ATTORNEY'S FEES TO PREVAILING PARTIES IN FEE SHIFTING STATUTES SUCH AS 42 U.S.C. SECTION 1988; AND THE STANDARDS SHOULD IN- CORPORATE THE PRINCIPLE OF DIS- PROPORTIONALITY. APPLIED TO THE INSTANT CASE, THE STANDARDS WOULD REQUIRE A HOLDING THAT THE AWARD OF COUNSEL FEES CON- STITUTED AN ABUSE OF DISCRETION ....	4
Conclusion.....	12

TABLE OF AUTHORITIES

	PAGE
<i>Cases</i>	
<i>Blum v. Stenson</i> , ____ U.S. ____, 104 S. Ct. 1541 (1984).....	9
<i>City of Riverside v. Rivera</i> , ____ U.S. ____, 106 S. Ct. 5 (1985).....	10
<i>Coop v. City of South Bend</i> , 635 F.2d 652 (7th Cir. 1980).....	6
<i>Garmon v. Foust</i> , 741 F.2d 1069 (8th Cir. 1984) ....	6
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983) .....	5,9
<i>Jaquette v. Black Hawk County</i> , 710 F.2d 455 (8th Cir. 1983) .....	6
<i>Rivera v. City of Riverside</i> , 679 F.2d 795 (9th Cir. 1982).....	3
<i>Skoda v. Fontani</i> , 646 F.2d 1193 (7th Cir. 1981)....	6
<i>United States v. School Board of City of Suffolk</i> , 418 F. Supp. 639 (E. D. Va. 1976) .....	11

*Statutes, Bills and Rules*

20 U.S.C. Section 1617.....	10
42 U.S.C. Section 1983.....	<i>passim</i>
42 U.S.C. Section 1988.....	<i>passim</i>
S. 1580, Legal Fees Equity Act.....	7, 9
Code of Professional Responsibility, Disciplinary Rule 2—106(B), American Bar Association.....	7

*Reports and Articles*

H.R. Rep. No. 94-1558 (1976) .....	5
S. Rep. No. 94-1011 (1976) .....	6
Germond, "President's Message", National Sheriff (October-November 1985) .....	8
Jensen, Statement, Subcommittee on Constitution, Committee on the Judiciary, U.S. Senate, Octo- ber 8, 1985 .....	6,7,9
Kirklín, "Calculation of 'Reasonable Attorneys' Fees", Civil Rights Litigation and Attorney Fees Annual Handbook (Clark Boardman Co., N.Y., N.Y. 1985) .....	6
Lindsey, "Rising Tide of Liability Suits in Nation Forcing Changes in Lives", New York Times, November 18, 1985 .....	8-9
Stein, "Overview of Attorneys' Fees Awards Un- der Section 1988," Civil Rights Litigation and Attorney Fees Annual Handbook (Clark Board- man Co., N.Y., N.Y. 1985) .....	6,7



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1985

---

CITY OF RIVERSIDE, ET AL,

*Petitioners,*

v.

SANTOS RIVERA, ET AL.

*Respondents.*

---

**BRIEF AMICI CURIAE OF  
AMERICANS FOR EFFECTIVE LAW  
ENFORCEMENT, INC.  
JOINED BY  
THE NATIONAL DISTRICT ATTORNEYS  
ASSOCIATION, INC.,  
THE INTERNATIONAL ASSOCIATION OF  
CHIEFS OF POLICE, INC.,  
AND THE  
LEGAL FOUNDATION OF AMERICA,  
IN SUPPORT OF THE PETITIONERS**

---

This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Jonathan Kotler, Esq., Counsel for Petitioners, and Gerald P. Lopez, Esq., Counsel for Respondents. Letters of Consent of both parties have been filed with the Clerk of this Court.

## INTEREST OF AMICI

**Americans for Effective Law Enforcement, Inc. (AELE)**, as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

**AELE** has previously appeared as *amicus curiae* over sixty times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

**The National District Attorneys Association, Inc. (NDAA)** is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

**The International Association of Chiefs of Police, Inc. (IACP)**, is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

**The Legal Foundation of America (LFA)** is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in



this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

*Amici* are professional associations representing the interests of law enforcement agencies and their municipalities at the state and local level. Our members include (1) law enforcement administrators who are frequently the target, in their personal and official capacity, of lawsuits brought under 42 U.S.C. Section 1983, and the award of counsel fees under 42 U.S.C. Section 1988; and (2) prosecutors, county counsel and police legal advisors who, in their civil capacity, are called upon to defend such suits against law enforcement administrators, law enforcement agencies, and their employing county or municipal government.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of rulings such as that of the court below, *Rivera v. City of Riverside*, 679 F.2d 795 (9th Cir. 1982), and we wish to impart that knowledge to this Court. We respectfully ask this Court to consider this information in reaching its decision in this case.